

7 FAM 960

CRIMINAL MATTERS, REQUESTS FROM FOREIGN TRIBUNALS, AND OTHER SPECIAL ISSUES

(CT:CON-127; 01-26-2006)
(Office of Origin: CA/OCS/PRI)

7 FAM 961 SPECIAL JUDICIAL ASSISTANCE ISSUES

(CT:CON-127; 01-26-2006)

This subchapter addresses special issues associated with judicial assistance questions to which the procedures outlined elsewhere in this chapter do not apply. This includes, but is not limited to, judicial assistance requests in criminal matters, requests from foreign courts and tribunals for judicial assistance from the United States, travel of foreign officials to the United States related to judicial assistance, and the enforcement of judgments issued by courts in one country in another country.

7 FAM 962 CRIMINAL MATTERS

7 FAM 962.1 MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS TREATIES (MLATs)

(CT:CON-127; 01-26-2006)

- a. The United States is a party to various bilateral treaties on Mutual Legal Assistance in Criminal Matters (MLAT). See the Bureau of Consular Affairs Internet feature on Mutual Legal Assistance Treaties and Other Agreements and Treaties in Force on the Department of State Internet page. Since the first U.S. bilateral Mutual Legal Assistance Treaty (MLAT) entered into force with Switzerland in 1977, our MLATs have become an increasingly important. They seek to improve the effectiveness of judicial assistance and to regularize and facilitate its procedures. Each country designates a central authority, generally the two Justice Departments, for direct communication. The treaties include the power to summon witnesses, to compel the production of documents and other real evidence, to issue search warrants, and to serve process. Consular

officers may be called on to assist U.S. prosecutors in making arrangements for obtaining evidence under such agreements. This assistance usually takes the form of arranging appointments, providing office space, administering oaths, and so forth.

- b. **Defense Requests:** Generally, the remedies offered by the MLAT treaties are **only available to the prosecutors**. The defense must usually proceed with the methods of obtaining evidence in criminal matters under the laws of the host country, which usually involve letters rogatory. Defense requests in criminal matters should be directed to CA/OCS/ACS, which will consult with CA/OCS/PRI as appropriate (ASKPRI@state.gov).
- c. The U.S. Central Authority for MLAT treaties is the U.S. Department of Justice, Criminal Division, Office of International Affairs. The Department of State Office responsible for questions related to MLAT treaties is the Office of the Legal Adviser for Law Enforcement and Intelligence (L/LEI).
- d. The United States now has the following bilateral MLATs in force, unless otherwise noted as being signed but not in force. This list is subject to change. See Treaties in Force and Treaty Actions for the most recent information. The U.S. is also a party to the OAS Multilateral MLAT.

Country	Entered Into Force (or signed, not yet in force, where noted)	Citations
Antigua and Barbuda	July 1, 1999	Treaty Doc. 105-24 105 th Cong., 1 st Sess. Exec. Rept. 105-22, 105 th Cong., 2 nd Sess.
Argentina	February 9, 1993	Treaty Doc. 102-18, 102 nd Cong., 1 st Sess., Exec. Rept. 102-33, 102 nd Cong., 1 st Sess.
Australia	September 30, 1999	Treaty Doc. 105-27, 105 th Cong., 1 st Sess. Exec. Rept. 105-22, 105 th Cong., 2 nd Sess.
Austria	August 1, 1998	Treaty Doc. 104-21, 104 th Cong., 1 st Sess., Exec. Rept. 104-24, 104 th Cong., 2 nd Sess.
Bahamas	July 18, 1990	Treaty Doc. 100-17, 100 th Cong. 2 nd Sess. Exec. Rept. 100-30, 100 th Cong.

		2 nd Sess.
Barbados	March 3, 2000	Treaty Doc. 105-23, 105 th Cong., 1 st Sess., Exec. Rept. 105-22, 105 th Cong. 2 nd Sess
Belize	January 7, 2003	Treaty Doc. 107-13
Belgium	January 1, 2000	Treaty Doc. 100-16, 100 th Cong., 2 nd Sess., Exec. Rept. 100-29, 100 th Cong., 2d Sess. Exec. Rept. 101-11, 101 st Cong., 1 st Sess.
Brazil	February 21, 2001	Treaty Doc. 105-42 105 th Cong. 2 nd Sess., Exec. Rept 105-22, 105 th Cong, 2 nd Sess.
Canada	January 24, 1990	Treaty Doc. 100-14; 100 th Cong., 2 nd Sess. Exec. Rept. 100-28; 100 th Cong, 2 nd Sess. Exec. Rept 101-10; 101 st Cong., 1 st Sess. XXIV ILM No. 4, 7/85, 1092-1099.
Colombia	Signed August 20, 1980 (Not in Force)	Treaty Doc. 97-11, 97 th Cong. 1 st Sess. Exec Rept 97-35
Cyprus	September 18, 2002	Treaty Doc. 106-35, 106 Cong. 2 nd Sess. Exec. Rept 106-24, 106 Cong. 2 nd Sess.
Czech Republic	May 7, 2000	Treaty Doc. 105-47, 105 th Cong., 2 nd Sess., Exec. Rept. 105-22, 105 th Cong. 2 nd Sess.
Dominica	May 25, 2000	Treaty Doc. 105-24, 105 th Cong., 1 st Sess., Exec. Rept. 105-22; 105 th Cong. 2 nd Sess.
Egypt	November 29, 2001	Treaty Doc. 106-19, 106 th Cong. 2 nd Sess., Exec. Rept. 106-24, 106 th Cong, 2 nd Sess.
Estonia	October 20, 2000	Treaty Doc. 105-52, 105 th Cong., 2 nd Sess., Exec. Rept. 105-22, 105 th Cong.

		2 nd Sess.
European Union	Signed June 25, 2003 (Not in Force)	Agreement on Mutual Legal Assistance Between European Union and United States of America (EU site)
Finland	Signed December 16, 2004 (Not in Force)	
France	December 1, 2001	Treaty Doc. 106-17, 106 th Cong. 2 nd Sess., Exec. Rept 106-24, 106 th Cong. 2 nd Sess.
Germany	Signed October 14, 2003 (Not in Force)	
Greece	November 20, 2001	Treaty Doc. 106-18, 106 th Cong. 2 nd Sess., Exec. Rept. 106-24, 106 th Cong, 2 ^d Sess.
Grenada	September 14, 1999	Treaty Doc. 15-24, 105 th Cong. 1 st Sess., Exec. Rept. 105-22, 105 th Cong., 2 ^d Sess.
Hong Kong SAR	January 21, 2000	Treaty Doc. 105-6, 105 th Cong., 1 st Sess., Exec. Rept. 105-22; 105 th Cong., 2 ^d Sess.
Hungary	March 18, 1997	Treaty Doc. 104-20, 104 th Cong., 1 st Sess. Exec Rept. 104-25, 104 th Cong. 2 ^d Sess.
India	Signed October 17, 2001 (Not in Force)	Treaty Doc. 107-3, 107 th Cong., 2 ^d Sess.;
Ireland	Signed January 18, 2001 (Not in Force)	Treaty Doc. 107-9, 107 th Cong., 2 ^d Sess.
Israel	May 25, 1999	Treaty Doc. 105-40, 105 th Cong., 2d Sess., Exec. Rept. 105-22, 105 th Cong., 2d Sess.

Italy	November 13, 1985	Sen. Ex. 98-25, Exec. Rept. 98-36, 98 th Cong., 2d Sess.
Jamaica	July 25, 1995	Treaty Doc. 102-16, 102d Cong., 1 st Sess., Exec. Rept. 102-32, 102d Cong., 1 st Sess.
Japan	Signed August 5, 2003 (Not in Force)	Treaty Doc. 108-12.
Korea	May 23, 1997	Treaty Doc. 104-1, 104 th Cong., 1 st Sess., Exec. Rept. 104-22; 104 th Cong. 2d Sess.
Latvia	September 17, 1999	Treaty Doc. 105-34, 105 th Cong., 2d Sess., Exec. Rept. 105-22; 105 th Cong., 2 nd Sess.
Liechtenstein	August 1, 2003	Treaty Doc. 107-16
Lithuania	August 26, 1999	Treaty Doc. 105-41, 105 th Cong., 2d Sess., Exec. Rept. 105-22, 105 th Cong., 2d Sess.
Luxembourg	February 1, 2001	Treaty Doc. 105-11, 105 th Cong., 1 st Sess., Exec. Rept. 105-22, 105 th Cong., 2d Sess.
Mexico	May 3, 1991	Treaty Doc. 100-13, Exec. Rept. 100-27, 100 th Cong., 2 Sess., Exec. Rept. 101-09, 101 st Cong. 1 st Sess., XXVII ILM, No. 2, 3/88, 447.
Morocco	June 23, 1993	Sen. Ex. 98-24, Exec. Rept. 98-35, 98 th Cong., 2d Sess.
Netherlands	September 15, 1983	TIAS 10734
Panama	September 6, 1995	Treaty Doc. 102-15, 102 Cong., 1 st Sess., Exec. Rept. 104-3, 102 Cong., 2d Sess.

Philippines	November 22, 1996	Treaty Doc. 104-18, 104 th Cong., 1 st Sess., Exec. Rept. 104-26, 104 th Cong., 2d Sess.
Poland	September 17, 1999	Treaty Doc. 105-12, 105 th Cong., 1 st Sess., Exec. Rept. 105-22, 105 th Cong., 2d Sess.
Romania	October 17, 2001	Treaty Doc. 106-20, 106 th Cong. 2d Sess., Exec. Rept. 106-24, 106 th Cong., 2d Sess.
Russian Federation		Fact Sheet Mutual Legal Assistance Treaty Between the U.S. and Russia January 31, 2002 Department of Justice (DOJ) Overseas Prosecutorial Development
Saint Kitts & Nevis	February 23, 2000	Treaty Doc. 105-37, Exec. Rept. 105-22, 105 th Cong., 2d Sess.
Saint Lucia	February 2, 2000	Treaty Doc. 105-24, 105 th Cong., 1 st Sess., Exec. Rept. 105-22; 105 th Cong., 2d Sess.
Saint Vincent & the Grenadines	September 8, 1999	Treaty Doc. 105-44, Exec. Rept. 105-22, 105 th Cong., 2d Sess.
South Africa	June 25, 2001	Treaty Doc. 106-36, 106 th Cong., 2d Sess. Exec. Rept. 106-24, 106 th Cong. 2d Sess.
Spain	June 30, 1993	Treaty Doc. 102-21, 102d Cong., 2d Sess., Exec. Rept. 102-35, 102d Cong., 2d Sess.
Sweden	Signed December 17, 2001 (Not in Force)	Treaty Doc. 107-12, 107 th Cong., 2d Sess.
Switzerland	January 23, 1977	TIAS 8302, 27 UST 2019

Thailand	June 10, 1993	Treaty Doc. 100-18, Exec. Rept. 100-31, 100 th Cong., 3d Sess., Exec. Rept. 101-13, 101 st Cong., 1 st Sess.
Trinidad and Tobago	November 29, 1999	Treaty Doc. 105-22, 105 th Cong., 1 st Sess., Exec. Rept. 105-22, 105 th Cong., 2d Sess.
Turkey	January 1, 1981	TIAS 9891
United Kingdom	December 2, 1996	Treaty Doc. 104-2, 104 th Cong., 1 st Sess., Exec. Rept. 104-23, 104 th Cong., 2d Sess.
United Kingdom (Cayman Islands)	March 19, 1990	Treaty Doc. 100-8; 100 th Cong., 1 st Sess., Exec. Rept. 100-26, 100 th Cong., 1 st Sess., Exec. Rept. 100-26; 100 th Cong., 2d Sess., Exec. Rept. 101-8, 101 st Cong., 1 st Sess., XXVI ILM 536, 3/87.
United Kingdom (Anguilla)	November 9, 1990	Treaty with U.K. on Cayman Islands extended to Anguilla.
United Kingdom (British Virgin Islands)	November 9, 1990	Treaty with U.K. on Cayman Islands extended to British Virgin Islands.
United Kingdom (Montserrat)	April 26, 1991	Treaty with U.K. on Cayman Islands extended to Montserrat.
United Kingdom (Turks and Caicos Islands)	November 9, 1990	Treaty with U.K. on Cayman Islands extended to Turks and Caicos.
Uruguay	April 15, 1994	Treaty Doc. 102-19, 102d Cong., 1 st Sess., Exec. Rept. 102-34, 102d Cong., 2d Sess.
Venezuela	Signed October 12, 1997 (Not in Force)	Treaty Doc. 105-38, 105 th Cong., 2d Sess., Exec. Rept. 105-22, 105 th Cong., 2d Sess.

7 FAM 962.2 Coordination with U.S. Law

Enforcement at U.S. Embassies and Consulates

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For countries where there is no MLAT treaty in force, U.S. federal, state and local prosecutors may require consular assistance in the taking of depositions of willing witnesses, transmittal of letters rogatory for compulsion of evidence, and preparation of special authentication certificates required for criminal matters. (See the Federal Rules of Evidence, Rule 902, Rule 1000-1008).

7 FAM 962.3 Grand Jury Secrecy

(CT:CON-127; 01-26-2006)

When the Department receives a request for judicial assistance related to a Grand Jury proceeding, instructions from CA/OCS will include specific guidance about grand jury secrecy, Rule 6(e) Federal Rules of Criminal Procedure. CA/OCS/PRI provides guidance to CA/OCS/ACS and posts abroad, coordinating closely with the Office of the Legal Adviser (L/CA and L/LEI) and the U.S. Department of Justice as appropriate in these cases. Access to this information is strictly on a need to know basis for fulfillment of the request. Information about Department of State and U.S. Embassy and Consulate officials with access to information about Grand Jury proceedings must be reported to CA/OCS/PRI to be shared with the Court.

ABA Frequently Asked Questions about the Grand Jury System

U.S. Department of Justice Grand Jury Manual

U.S. Department of Justice, U.S. Attorneys Manual, Criminal Resource Manual 156 Disclosure of matters occurring before the grand jury to Department of Justice attorneys and Assistant United States Attorneys

CA/OCS Intranet Grand Jury Feature

7 FAM 962.4 Service Of Federal Criminal Subpoenas

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7 FAM 950 provides information on "Service of Federal Criminal Subpoenas".

7 FAM 962.5 Defense Requests In Criminal Matters

(CT:CON-127; 01-26-2006)

MLAT treaties are not generally available as a mechanism for obtaining judicial assistance on behalf of the defense in criminal cases. Defense

counsel may consult the Bureau of Consular Affairs Internet page judicial assistance material for general and country specific guidance. Requests for taking depositions of willing witnesses abroad may be made directly to U.S. embassies and consulates abroad. Requests for compulsion of evidence pursuant to a letter rogatory may be directed to CA/OCS/ACS. CA/OCS/PRI is available to assist in these cases.

7 FAM 963 U.S. JUDICIAL ASSISTANCE TO FOREIGN TRIBUNALS

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- a. 28 U.S.C. 1781 provides The Department of State has power, directly, or through suitable channels to receive a letter rogatory issued, or request made, by a foreign or international tribunal, to transmit it to the tribunal, officer, or agency in the United States to whom it is addressed, and to receive and return it after execution.
- b. **United States Attorney Responsibilities -- Judicial Assistance to Foreign Tribunals** (U.S. Attorneys Manual 4-1.325): 28 U.S.C. 1782 authorizes the United States district court for the district in which a person resides or is found to order such person to give his/her testimony or to produce documents or other things for use in a proceeding in a foreign or international tribunal. Requests for international judicial assistance are executed either on the basis of treaty obligations assumed by the United States (see, e.g., the Hague Evidence Convention, TIAS 7444, 23 UST 2555) or on the basis of international comity and courtesy. Requests for international judicial assistance from foreign tribunals in civil matters will be referred to United States Attorney's by the Office of Foreign Litigation, Civil Division. (See 28 CFR 0.49). United States Attorney's (federal prosecutors) do not attempt to execute foreign evidence requests in civil cases without obtaining the approval of the Office of Foreign Litigation (U.S. Attorneys Manual 4-4.600).

28 CFR 0.49 International judicial assistance.

"The Assistant Attorney General in charge of the Civil Division shall direct and supervise the following functions:

(a) The functions of the ``Central Authority" under the Convention between the United States and other Governments on the Taking of Evidence Abroad in Civil and Commercial Matters (Hague Evidence Convention), TIAS 7444, which entered into force on October 7, 1972.

(b) The functions of the ``Central Authority" under the Convention between the United States and other Governments on the Service Abroad of Judicial and Extrajudicial Documents (Hague Service Convention), TIAS 6638, which

entered into force on February 10, 1969.

(c) To receive letters of requests issued by foreign and international judicial authorities which are referred to the Department of Justice through diplomatic or other governmental channels, and to transmit them to the appropriate courts or officers in the United States for execution.

(d) To receive and transmit through proper channels letters of request addressed by courts in the United States to foreign tribunals in connection with litigation to which the United States is a party.”

- c. The Department of State’s position on the assistance that the United States will give to foreign tribunals in judicial assistance matters is stated in the Secretary’s circular diplomatic note of February 3, 1976. This note deals with the service of judicial documents, requests for evidence (testimony, statements, documents or things); and other requests, including requests for the enforcement of judgments, which the Department will return unexecuted because they may not be enforced by means of a request for judicial assistance.
- d. The Department provided amended guidance to the Chiefs of Mission in Washington, DC in the Secretary’s circular diplomatic note of June 4, 2003, which explained that the U.S. Department of Justice retained the services of a private contractor to effect service of process in the United States on behalf of foreign tribunals pursuant to requests under the Hague Service Convention, the Inter-American Convention on Letters Rogatory (Inter-American Service Convention) and Additional Protocol, and requests received from foreign tribunals in countries not party to any treaty on service of process. See also the U.S. Notification to the Organization of American States and the U.S. Notification to the Hague Conference on Private International Law. (See 7 FAM 950).
- e. The Secretary’s circular notes are available to posts in English and translations via the CA/OCS Intranet judicial assistance, foreign government judicial assistance requests feature.

7 FAM 965 RESTRICTIONS ON TRAVEL TO THE UNITED STATES OF FOREIGN GOVERNMENT OFFICIALS

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- a. 7 FAM 941 addresses the procedures to be followed to obtain post and host country clearance for the travel of U.S. officials for the purposes of conducting informal interviews, depositions or other activities related to judicial assistance matters.

- b. Pursuant to 18 U.S.C. 951, persons who act as agents of foreign governments are required to notify the Attorney General whenever they travel to the United States. Upon learning of the travel plans of such agents, consular officers should advise the officials concerned how to effect notification. Should the travel of an agent of a foreign government to the United States raise questions of significant political or legal ramifications, consult the Department (CA/OCS). Failure of agents of foreign governments to notify the Attorney General may violate 18 U.S.C. 951, and may result in fines and/or imprisonment, or both.
- c. It is the responsibility of individuals covered by 18 U.S.C. 951 to ensure their compliance with the statute. Consular officers have no statutory responsibility under 18 U.S.C. 951, hence the providing of information as described above may be limited to those agents of foreign governments who travel to the United States while engaged in judicial investigations pursuant to treaties or other mutual assistance requests, or engaged in law enforcement investigations or regulatory agency activity.
- d. Agents engaged in judicial activity shall provide notification in the form of a letter, telex, or FAX, addressed to the Attorney General, and directed to:

The Office of International Affairs
Criminal Division
Department of Justice
1400 New York Ave. N.W.
Washington, DC 20530
FAX: (202) 514-0080.

- e. Notification made by agents engaged in law enforcement investigations shall be made to the Attorney General in a similar manner and directed to the attention of:

INTERPOL
United States National Central Bureau
Department of Justice
Washington, DC 20520
FAX: (202) 272-5941.

- f. See 28 CFR 73 Notification to the Attorney General by Agents of Foreign Governments.

28 CFR 73.3 Form of notification.

“(a) Notification shall be made by the agent in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of the Registration Unit of the Criminal Division, except for those agents described in paragraphs (b) and (c) of this section. The document shall state that it is

a notification under 18 U.S.C. 951, and provide the name or names of the agent making the notification, the firm name, if any, and the business address or addresses of the agent, the identity of the foreign government or official for whom the agent is acting, and a brief description of the activities to be conducted for the foreign government or official and the anticipated duration of the activities. Each notification shall contain a certification, pursuant to 28 U.S.C. 1746, that the notification is true and correct.

(b) Notification by agents engaged in law enforcement investigations or regulatory agency activity shall be in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of Interpol-United States National Central Bureau. Notification by agents engaged in intelligence, counterintelligence, espionage, counterespionage or counterterrorism assignment or service shall be in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of the nearest FBI Legal Attache. In case of exceptional circumstances, notification shall be provided contemporaneously or as soon as reasonably possible by the agent or the agent's supervisor. The letter, telex, or facsimile shall include the information set forth in paragraph (a) of this section.

(c) Notification made by agents engaged in judicial investigations pursuant to treaties or other mutual assistance requests or letters rogatory, shall be made in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of the Office of International Affairs, Criminal Division. The letter, telex, or facsimile shall include the information set forth in paragraph (a) of this section."

7 FAM 966 ASSISTANCE TO U.S., STATE AND LOCAL GOVERNMENT AGENCIES

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Consular officers should provide assistance to U.S., State, and local government agencies in judicial assistance matters, bearing in mind the need to observe host country legal procedures and sensitivities, as well as any limitations prescribed by U.S. law or policy. If the consular officer has doubts about a request for legal assistance, refer the matter to the Department (CA/OCS/PRI) at ASKPRI@state.gov.

U.S. Federal Agencies

National Association of Attorneys General

National District Attorneys Association

7 FAM 967 ENFORCEMENT OF JUDGMENTS

(CT:CON-127; 01-26-2006)

- a. There is no treaty in force between the United States and any country regarding enforcement of judgments. You may direct inquirers to the Department of State, Bureau of Consular Affairs Internet page enforcement of judgments feature.
- b. The United States does have federal bilateral reciprocal administrative agreements on child support enforcement. For questions about international child support enforcement, see 7 FAM 1750 and the Internet features:

Bureau of Consular Affairs

Child Support Enforcement feature

**Department of Health and Human Services, Administration for
Children and Families, Office of Child Support Enforcement
(HHS/ACF/OCSE)**

Foreign Reciprocating Countries

7 FAM 968 THROUGH 969 UNASSIGNED